

## 7.0 NEPA COMPLIANCE

### 7.1 STATUTES, REGULATIONS, CONSULTATIONS, AND OTHER REQUIREMENTS

*This section identifies and summarizes the major Federal, state and local laws, regulations, and requirements that may apply to the alternatives analyzed in this Detailed Project Report and Environmental Impact Statement.*

#### **Federal Environmental Statutes and Regulations**

***Water Resources Development Act of 1996, Section 579*** The Milton Local Protection Project was authorized under this act which mandates the U.S. Army, Corps of Engineers to design and implement a flood damage reduction plan for the Greenbrier Basin. The Act specifically states that the project must be sufficient to afford the communities with protection against flooding such as occurred in November 1985, January 1996, and May 1996.

***National Environmental Policy Act of 1969 (NEPA), as amended (42 United States Code [USC] §4321 et seq.), the Council on Environmental Quality Implementing Regulations (40 Code of Federal Regulations [CFR] § 1500 et seq.)*** The environmental impacts are being analyzed in order to comply with NEPA, the Federal law that requires agencies of the Federal government to study the possible environmental impacts of major Federal actions significantly affecting the quality of the human environment.

***Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 USC §4601 et seq.)*** The Uniform Relocation Assistance and Real Property Acquisition Policies Act establishes guidelines to provide compensation for owners of property and houses affected by Federal projects. Owners of property and houses that must be acquired and removed to construct the levee/floodwall in Milton and Riverside will be compensated according to the guidelines established by this Act.

***Clean Air Act (CAA), as amended (42 USC §7401 et seq.)*** The CAA establishes National Ambient Air Quality Standards (NAAQS) set by the U.S. Environmental Protection Agency (EPA) for certain pervasive pollutants; the standards are set at a level designed to protect human health with a conservative margin of safety. The CAA contains emission limiting programs and permit programs to protect the NAAQS and air quality. Regulations implementing the CAA are found in 40 CFR Parts 50-95.

***Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980/Superfund Amendments and Reauthorization Act (SARA) of 1986 (42 USC §9601 et seq.)*** This statute requires cleanup and notification if there is a release or threatened release of a hazardous substance.

***Occupational Safety and Health Act of 1970, as amended (29 USC §651 et seq.)*** Compliance with the *Occupational Safety and Health Act* would be required according to *Occupational Safety and Health Act* standards. Specifically, the construction and general industry rules in 29 CFR Parts 1910 and 1926 apply. Operational employees would be instructed in worker protection and safety procedures, and would be provided appropriate personal protective equipment.

**Clean Water Act (CWA) of 1977 as amended (33 USC §§1251 et seq.)** The *Clean Water Act* focuses on improving the quality of water resources by providing a comprehensive framework of standards, technical tools and financial assistance to address the many causes of pollution and poor water quality, including municipal and industrial wastewater discharges, polluted runoff from urban and rural areas, and habitat destruction. Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged and fill material into waters of the United States, including wetlands. Activities in waters of the United States that are regulated under this program include fills for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports), and conversion of wetlands to uplands for farming and forestry. A Federal permit is required to discharge dredged or fill material into wetlands and other waters.

***Compliance With Floodplain/Wetlands Environmental Review Requirements.***

Executive Order 11988, Floodplain Management, directs Federal agencies to establish procedures to ensure that they consider and minimize potential effects of flood hazards and floodplain management for any action undertaken. Executive Order 11990, Protection of Wetlands, requires Federal agencies to avoid short- and long- term impacts to wetlands if a practical alternative exists. Where there is no practical alternative to development in floodplain and wetlands, the Corps is required to prepare a floodplain and wetlands assessment discussing the effects on the floodplain and wetlands, and consideration of alternatives. In addition, these regulations require the Corps to design or modify its actions to minimize potential damage in floodplains or harm to wetlands and provide opportunity for public review.

***Endangered Species Act of 1973 (16 USC §§1531 et seq.)*** Section 7, “Interagency Cooperation,” requires any Federal agency authorizing, funding, or carrying out any action to ensure that the action is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat of such species. Consequently, the USFWS conducts a consultation, in compliance with Subsection (a)(2) of Section 7 of the Act, with regard to the impacts of the proposed project on threatened and endangered species listed by U.S. Fish & Wildlife Service (USFWS) and any critical habitat of such species in the vicinity of the project. A consultation has been conducted with the USFWS for the proposed project.

***Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994)*** This Executive Order requires Federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

***Fish and Wildlife Coordination Act (16 USC §§661 et seq.)*** This Federal statute requires consultation on the possible effects on wildlife if there is construction, modification, or control of bodies of water in excess of 10 acres (4 ha) in surface area.

***National Historic Preservation Act of 1966, as amended (16 USC 470 et. seq.)*** This Federal statute requires the Corps to consult with the State Historic Preservation Officer (SHPO) prior to construction to ensure that no historical properties will be affected by the proposed project.

**Wild and Scenic Rivers Act of 1968 (16 USC §§1271 et seq.)** as amended, protects selected national rivers possessing outstanding scenic, recreational, geological, fish and wildlife, historical, cultural, or other similar values. These rivers are to be preserved in a free-flowing condition to protect water quality and for other vital national conservation purposes. This Act also instituted a National Wild and Scenic Rivers system, designated the initial rivers within the system, and developed standards for the addition of new rivers in the future. The Act requires consultation before construction of any Federal project associated with a river designated as wild and scenic or under study in order to minimize and mitigate any adverse effects on the physical and biological properties of the river.

**Rivers and Harbors Act of 1899 (33 U.S.C. 403).** Section 9 prohibits the construction of any bridge, dam, dike or causeway over or in navigable waterways of the U.S. without Congressional approval. Administration of Section 9 has been delegated to the Coast Guard. Structures authorized by State legislatures may be built if the affected navigable waters are totally within one State, provided that the plan is approved by the Chief of Engineers and the Secretary of Army (33 U.S.C. 401). Section 10 covers construction, excavation, or deposition of materials in, over, or under such waters, or any work which would affect the course, location, condition, or capacity of those waters.

**Federal Water Project Recreation Act of 1965 (16 USC 4601-12 et seq.,)** as amended. This act states that Federal agencies must consider the potential outdoor recreational opportunities and potential fish and wildlife enhancement when planning navigation, flood control, reclamation, hydroelectric, or multipurpose water resource projects. If a project can provide either or both of these, it must be constructed, operated and maintained accordingly. Second, planning for a project's recreation potential must be coordinated with existing and planned federal, state or local public recreation developments. Third, project construction agencies must encourage non-federal public bodies to administer project land and water areas for recreation and fish and wildlife enhancement purposes, and to operate, maintain and replace facilities provided for those purposes, unless the areas or facilities are within a national recreation area, the national forest system, the public lands classified for retention in federal ownership or an authorized federal program for the conservation and development of fish and wildlife.

## **West Virginia Environmental Statutes and Regulations**

**West Virginia Air Quality Standards (45 CSR)** This title establishes ambient air quality standards and the procedures for maintaining air quality and controlling air pollution within West Virginia. Several Series under Title 45 are applicable to the Milton LLP. Series 4, 21, and 27 establish guidelines controlling the discharge of pollutants contributing to odors, volatile organic chemicals, and toxic air pollutants respectively. Other Series establish ambient air quality standards for sulfur oxides and particulate matter (Series 8) and nitrogen dioxide (Series 12). Series 13, 14, and 19 establish procedures for granting permits for construction purposes. Series 19 specifically relates to the construction of the pump stations, which would be new air emissions sources constructed by the LLP. Series 15 and 16 establish the emissions standards for hazardous air pollutants pursuant to 40 CFR 61 and standards of performance for stationary sources pursuant to 40 CFR 60 respectively, which are also applicable to the

pump stations. Series 30 establishes requirements for operating permits and Series 38 establishes provisions for the determination of compliance with Title 45.

***West Virginia Water Resources Standards (47 CSR)*** This title establishes procedures to promote pollution prevention by encouraging the reduction or elimination of pollutants at the source through process modification, material substitution, in process recycling, reduction of raw material use or other source reduction opportunities. This rule establishes requirements governing the Division of Environmental Protection's in-house mechanisms for encouraging pollution prevention efforts by industries to assist in achieving regulatory compliance; and to further improve compliance with environmental laws by improving advisory and technical assistance features of programs within the Division. Applicable Series under Title 47 include the following: Series 3, Pollution Prevention; Series 10, NPDES Program; Series 11, Special Regulations; Series 33, State Construction Grants Program Rule; Series 34, Dam Safety Rules; Series 58, Groundwater Protection Regulations; and Series 59, Monitoring Well Rules.

## **7.2 LIST OF PREPARERS AND REVIEWERS**

*The Environmental Impact Statement parts of the Milton LPP Detailed Project Report and Environmental Impact Statement were prepared under the supervision of the U.S. Army Corps of Engineers, Huntington District. The individuals who contributed to the preparation of this document are listed below, accompanied by their organization, education, years of experience, and project role.*

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